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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 RENEE J. B., ) Case No. CV 18-8098-PJW  
11 Plaintiff, )  
12 v. ) MEMORANDUM OPINION AND ORDER  
13 ANDREW M. SAUL, )  
14 COMMISSIONER OF THE )  
15 SOCIAL SECURITY ADMINISTRATION, )  
16 Defendant. )  
17

18 I.

19 INTRODUCTION

20 Plaintiff appeals a decision by Defendant Social Security  
21 Administration ("the Agency"), denying her applications for Disability  
22 Insurance Benefits ("DIB") and Supplemental Security Income ("SSI").  
23 She contends that the Administrative Law Judge ("ALJ") erred when she  
24 discounted Plaintiff's testimony and when she rejected the treating  
25 doctor's opinion that Plaintiff could not work. For the reasons  
26 discussed below, the ALJ's decision is affirmed.<sup>1</sup>  
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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure Rule 25(d), Andrew M. Saul is hereby substituted in as the defendant.

1 II.

2 SUMMARY OF PROCEEDINGS

3 In September 2014, Plaintiff applied for DIB and SSI, alleging  
4 that she had been disabled since July 15, 2014, due to scoliosis,  
5 herniated discs, high cholesterol, and migraines. (Administrative  
6 Record ("AR") 274, 278, 311.) Her applications were denied and she  
7 requested and was granted a hearing before an ALJ. (AR 143-66, 179-  
8 82.) The ALJ held a hearing in February 2017 and a supplemental  
9 hearing in August 2017. (AR 24-102.) In September 2017, she issued a  
10 decision, finding that Plaintiff was not disabled and denying her  
11 applications for benefits. (AR 9-18, 24-102.) Plaintiff appealed to  
12 the Appeals Council, which denied review. (Dkt. No. 21.) This action  
13 followed.

14 III.

15 ANALYSIS

16 A. Plaintiff's Testimony

17 The essence of Plaintiff's testimony was that excruciating pain  
18 prevented her from working. She claimed that this pain limited her to  
19 standing for only 30 seconds and sitting for only 15 minutes. (AR  
20 78.) She also testified that migraines prevented her from  
21 concentrating. (AR 78.) The ALJ discounted this testimony,  
22 concluding: (1) the medical evidence did not support it; (2) back  
23 surgery had been successful in relieving her symptoms; and (3) the  
24 only pain medication she was taking was for migraines and this  
25 medication helped alleviate the pain. (AR 15.)

26 Generally speaking, these are valid reasons for questioning a  
27 claimant's testimony. See *Warre v. Comm'r of Soc. Sec. Admin.*, 439  
28 F.3d 1001, 1006 (9th Cir. 2006) (finding impairments that can be

1 controlled effectively with treatment are not disabling);  
2 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (noting ALJ  
3 can consider objective medical evidence in determining credibility of  
4 claimant); SSR 16-3p, at \*5 ("A report of minimal or negative findings  
5 or inconsistencies in the objective medical evidence is one of the  
6 many factors we must consider in evaluating the intensity,  
7 persistence, and limiting effects of an individual's symptoms.");  
8 *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (holding  
9 inconsistency between allegations of severe pain and conservative  
10 treatment was proper basis for discounting credibility). And, as  
11 discussed below, they are supported by substantial evidence in the  
12 record.

13       The ALJ discussed the medical evidence in detail and determined  
14 that it was inconsistent with Plaintiff's claims of debilitating pain.  
15 (AR 13-17.) For example, she noted that there was a lack of  
16 significant neurological findings and no evidence of muscle atrophy.  
17 Though Plaintiff underwent back surgery in May 2015, she was able to  
18 walk, presumably without a cane (since there is no mention of one),  
19 soon after the surgery. (AR 543-44.) Further, Plaintiff did not seek  
20 a pain specialist, neurologist, chiropractor, physical therapist, or  
21 acupuncturist after surgery, which, presumably, she would have done if  
22 she was experiencing excruciating pain. In fact, most of her follow-  
23 up appointments after surgery were for issues unrelated to her back or  
24 legs.

25       Plaintiff argues that her improvement after surgery was only  
26 temporary and that later her pain was the same as before the surgery.  
27 (Joint Stip. at 16.) Most of the chart notes suggest otherwise. And,  
28 though her treating doctor noted in April and May 2016 that Plaintiff

1 was complaining of lower back pain radiating down her left leg,  
2 Plaintiff did not pursue any therapy or treatment (like physical  
3 therapy, chiropractic treatment, or acupuncture) to attempt to address  
4 that pain. In fact, Plaintiff was referred to a pain specialist and  
5 neurologist after her surgery but apparently elected not to see  
6 either. (AR 548.)

7 Plaintiff argues that she did not take other pain medication  
8 because her migraine medication (Fioricet with codeine)--which she was  
9 taking seven times a day--was the only medication that worked for her.  
10 (Joint Stip. at 16-17.) But Plaintiff never explored with the pain  
11 specialist or the neurologist whether different medications or therapy  
12 might have worked. (AR 83.)

13 To the extent that Plaintiff is arguing that the ALJ erred when  
14 she failed to include any mental limitations to account for  
15 Plaintiff's "extreme pain with significant limitations in activities  
16 of daily living," this argument is also rejected. (Joint Stip. at  
17 17.) Plaintiff testified that she saw a doctor for depression but  
18 that that doctor "couldn't give me anything for it." (AR 86.)  
19 Plaintiff, however, did not provide that doctor's records. Further,  
20 she did not take any medication for emotional/psychiatric issues nor  
21 was she receiving therapy or treatment. Thus, the ALJ did not err  
22 when she concluded that the evidence did not support Plaintiff's claim  
23 that she was limited in her daily activities due to mental/emotional  
24 impairments. (AR 158.)

25 B. The Doctors' Opinions

26 Plaintiff's treating doctor Virgencita Cortes opined that  
27 Plaintiff's back and leg pain and her migraine headaches prevented her  
28 from working. (AR 642-46.) Non-examining doctor Peter Schosheim

1 concluded that Plaintiff could perform sedentary work. (AR 35-36,  
2 43.) The ALJ gave great weight to Dr. Schosheim's opinion and  
3 concluded that Plaintiff could perform sedentary work. Plaintiff  
4 contends that the ALJ erred in doing so. For the following reasons,  
5 the Court concludes that the ALJ did not err.

6 ALJs are tasked with resolving conflicts in the medical  
7 evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
8 All things being equal, treating doctors' opinions are entitled to the  
9 most weight because they are hired to cure and have more opportunity  
10 to know and observe the patient. *Id.* at 1041. If a treating doctor's  
11 opinion is contradicted by another doctor's opinion, however, an ALJ  
12 may reject it for specific and legitimate reasons that are supported  
13 by substantial evidence in the record. *Trevizo v. Berryhill*, 871 F.3d  
14 664, 675 (9th Cir. 2017), *as amended* (Sept. 14, 2017) (citing *Ryan v.*  
15 *Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)); *see also*  
16 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). "The ALJ can meet  
17 this burden by setting out a detailed and thorough summary of the  
18 facts and conflicting clinical evidence, stating his interpretation  
19 thereof, and making findings." *Trevizo*, 871 F.3d at 675 (citing  
20 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

21 In February 2017, Dr. Cortes diagnosed Plaintiff with severe  
22 lower back and leg pain. (AR 642.) She noted, among other things,  
23 that this made it difficult for Plaintiff to stand for more than 30  
24 seconds. (AR 642.) Dr. Cortes also reported that Plaintiff's left  
25 leg was in so much pain that the doctor could not even touch it and  
26 that when Plaintiff flexed her left knee she experienced excruciating  
27 pain. (AR 642.) Dr. Cortes opined that Plaintiff would only be able  
28

1 to work for five to ten minutes before taking a break for an hour to  
2 rest. (AR 644.)

3 The ALJ gave "little weight" to Dr. Cortes's opinion because she  
4 believed that it was: (1) "not supported by relevant objective medical  
5 evidence," including Dr. Cortes's own chart notes; (2) inconsistent  
6 with the medical evidence from other medical and nonmedical sources;  
7 (3) contradicted by "other factors"; and (4) based in large measure on  
8 Plaintiff's subjective complaints. (AR 17.) These are valid reasons  
9 for discounting a doctor's opinion, *see, e.g., Batson v. Comm'r of*  
10 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004) (affirming ALJ's  
11 rejection of treating physician's opinion that was contradicted by  
12 other medical evidence and was premised on claimant's subjective  
13 descriptions of pain); *Connett v. Barnhart*, 340 F.3d 871, 875 (9th  
14 Cir. 2003) (holding ALJ may reject the opinion of a treating physician  
15 whose own "treatment notes provide no basis for the functional  
16 restrictions he opined should be imposed on [the claimant]"); *Morgan*  
17 *v. Comm'r, Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)  
18 (affirming ALJ's rejection of treating physicians' unsupported and  
19 inconsistent opinions that relied on claimant's claims), and,  
20 generally speaking, they are supported by the record.

21 Dr. Cortes did not refer to any objective evidence to support her  
22 opinion that Plaintiff was essentially incapacitated. It seems,  
23 instead, that she simply accepted Plaintiff's subjective complaints  
24 and rendered an opinion consistent with them. Where, as here, the ALJ  
25 questions the claimant's testimony, she can discount the treating  
26 doctor's opinion that is based in large measure on the claimant's  
27 subjective complaints of pain.

1 By simply relying on what Plaintiff said, Dr. Cortes rendered an  
2 opinion without support. There was little or no objective evidence  
3 that Plaintiff would have difficulty standing for more than 30 seconds  
4 or that her leg hurt so much that Dr. Cortes could not even touch it.  
5 Nor was there evidence to support Dr. Cortes's opinion that Plaintiff  
6 could only work for five to ten minutes at a time and would then have  
7 to rest for an hour. Even assuming that Dr. Cortes's observations  
8 about Plaintiff's leg pain could be characterized as objective  
9 findings, they in no way supported her opinion regarding Plaintiff's  
10 other limitations, i.e., that she could not sit for more than ten  
11 minutes or look up or down at all. (AR 645.)

12 The ALJ also discounted Dr. Cortes's opinion because it was not  
13 supported by her treatment notes, particularly those following  
14 Plaintiff's May 2015 back surgery. (AR 17.) The chart notes  
15 following Plaintiff's surgery reveal that she was vastly improved. In  
16 fact, she reported that she was 70% better. (AR 556). Her  
17 appointments in September, October, and November of 2015 and March and  
18 September of 2016 were primarily for other medical issues, such as a  
19 rash, a well-woman examination, hormonal migraines, a colonoscopy, and  
20 right ear pain. (AR 543, 551, 553-55.) Though she complained between  
21 April and July of 2016 about back and leg pain (AR 545-51), a fair  
22 reading of the record shows that her condition vastly improved in the  
23 wake of her surgery. Further, as discussed above, Plaintiff was  
24 referred to a chronic pain specialist and a neurologist in May 2016  
25 when she complained of migraines but she elected not to see them. (AR  
26 544, 548.)

27 The ALJ further found that Dr. Cortes's opinion was not supported  
28 by the medical evidence from other medical sources. (AR 17.) This

1 was the essence of Dr. Schosheim's testimony. He pointed out, for  
2 example, that there were no records documenting any significant  
3 atrophy, sensory changes, or reflex changes.<sup>2</sup> (AR 33-35.) Dr.  
4 Schosheim opined that Plaintiff could perform a range of sedentary  
5 work. (AR 35-36, 43.) And he disagreed with Dr. Cortes's opinion  
6 that Plaintiff was limited to sitting for ten minutes and  
7 standing/walking for five minutes because there were no significant  
8 neurologic findings in the record to support it.<sup>3</sup> (AR 38.)

9 Plaintiff argues that Dr. Cortes's opinion is supported by the  
10 opinions of neurosurgeon Mehdi Habibi, who noted severe lower back  
11 pain radiating to the left leg (AR 433-34), and neurologist Dr. Lin,  
12 who noted tenderness in the entire left leg (AR 605-06). (Joint Stip.  
13 at 6.) But these doctors saw Plaintiff prior to her 2015 back  
14 surgery, and thus, their views have little or no bearing on Dr.  
15 Cortes's 2017 assessment.

16 The ALJ noted that Dr. Schosheim's opinion was more persuasive  
17 than Dr. Cortes's opinion because Dr. Schosheim is an orthopedic  
18 specialist whereas Dr. Cortes is an internist and family practitioner.  
19 (AR 17.) This is a proper basis for choosing one doctor over another.

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21 <sup>2</sup> Plaintiff argues that Dr. Schosheim's testimony that he  
22 disagreed with Dr. Cortes's opinion because there were no neurological  
23 findings to support it is undermined by the fact that there were  
24 neurological findings in the record. (Joint Stip. at 6.) But the  
25 neurological findings Plaintiff is referring to were made before  
26 Plaintiff's May 2015 surgery and do not relate to Dr. Cortes's 2017  
27 opinion. (AR 15, 389, 403, 452, 596.)

28 <sup>3</sup> Plaintiff takes issue with Dr. Schosheim's opinion because he  
was not aware that Plaintiff was prescribed a cane. (JS at 7.) The  
issue of Plaintiff's use of a cane was clarified by her testimony at  
the hearing, however, and Dr. Schosheim changed his opinion so that  
Plaintiff would be required to use a cane for standing and/or walking.  
(AR 41-43.)



1 See *Trevizo*, 871 F.3d at 675 (citing 20 C.F.R. § 404.1527(c)(2)-(6))  
2 (explaining ALJ can consider doctor's specialty in assessing how much  
3 weight to give an opinion).

4 Plaintiff argues that, "since [Dr. Schosheim] did not give an  
5 opinion in regards to the migraines," the ALJ needed to address the  
6 limitations given by Dr. Cortes that related to her migraines. (Joint  
7 Stip. at 14.) Plaintiff is mistaken. First, Dr. Cortes did not  
8 include migraines in her diagnoses and mentioned them only in  
9 determining Plaintiff's limitations in looking up and down. (AR 642,  
10 645.) Second, Dr. Schosheim did consider Plaintiff's migraines and  
11 accounted for them by precluding exposure to vibration, hazardous  
12 machinery, and unprotected heights. (AR 36.) Finally, the ALJ  
13 acknowledged Plaintiff's history of migraines and included limitations  
14 to account for them. (AR 16.)

15 IV.

16 CONCLUSION

17 For these reasons, the Agency's decision that Plaintiff is not  
18 disabled is affirmed and the case is dismissed with prejudice.

19 IT IS SO ORDERED.

20 DATED: March 19, 2020

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23 PATRICK J. WALSH  
24 UNITED STATES MAGISTRATE JUDGE  
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